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September 10, 1993

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SEP 10 1993

Mr. William F. Caton
Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Mr. Caton:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Strike" a pleading filed by Wilburn Industries, Inc.

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By:

John W. Hunter
John W. Hunter

By:

Stephen T. Selverton
Stephen T. Selverton

Enclosure

B:CATON.103

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SEP 10 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of:

DAVID A. RINGER

et al.,

Applications for Construction
Permit for a New FM Station,
Channel 280A, Westerville,
Ohio

MM Docket No. 93-107

File Nos. BPH-911230MA

through

BPH-911231MB

To: Administrative Law Judge
Walter C. Miller

MOTION TO STRIKE

Respectfully submitted,

MCNAIR & SANFORD, P.A.

By: _____
John W. Hunter

By: _____
Stephen T. Yelverton
Attorneys for Ohio Radio
Associates, Inc.
1155 15th Street, N.W., Suite 400
Washington, D.C. 20005
Telephone: (202) 659-3900

September 10, 1993

B:CATON.103

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MOTION TO STRIKE

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, hereby submits this "Motion to Strike." On September 3, 1993, Wilburn Industries, Inc. ("Wilburn") filed an "Opposition to Motion to Enlarge Issues." In support of its motion to strike the opposition, ORA offers the following comments.

On September 3, 1993, Wilburn filed an opposition to a motion to enlarge the issues, which had been filed by Shellee F. Davis on August 19, 1993. Wilburn, at n. 9, conceded that its opposition was filed one day late. It further indicated that oral consent from Davis had been obtained to file late. However, nothing was stated as to requesting consent from the Presiding Judge or the other parties.

Section 1.46 requires that a written motion for extension of time to have been filed and that the Presiding Judge and all parties be orally notified of the need for extension. Moreover, the Presiding Judge in Prehearing Order, FCC 93M-186, released April 26, 1993, at para. 22, stated that any requests for extensions of time must be in writing, must have the consent of all the parties, and that "captive extension" requests will not be entertained.

What Wilburn has filed is a captive extension request. Accordingly, the September 3, 1993, opposition must be stricken from the record as an improper extension request and not considered.

Another basis to strike the opposition is that it was actually filed two days late and not one day as claimed by Wilburn. Pursuant to Commission Rules, ten days plus three business days are allowed to file an opposition to a motion to enlarge the issues. The tenth day was Sunday, August 29. The third business day thereafter and thus the filing date would have been Wednesday, September 1. Pursuant to Sections 1.4 (e)(4) and (j), Wilburn was not allowed to consider Monday, August 30 as the tenth day and add three business days from that date to calculate the filing date. Thus, Wilburn made a false and misleading claim as to the filing date for its opposition.

WHEREFORE, in view of the foregoing, the Presiding Judge is requested to strike the opposition of Wilburn.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: 
John W. Hunter

By: 
Stephen T. Yelverton

020970.00001

ORA.x91

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 10th day of September, 1993, I have caused to be hand-delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Motion to Strike" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
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Stephen T. Yelverton